

WILLIAM C. MORGAN

IBLA 73-272

Decided September 17, 1973

Appeal from decision of the Wyoming State Office, Bureau of Land Management, declaring oil and gas lease Wyoming 15888 to have terminated.

Affirmed.

Oil and Gas Leases: Rentals! ! Oil and Gas Leases: Termination

Where a timely rental payment for a non! producing oil and gas lease is nominally deficient, such lease is automatically terminated if the deficiency, even though slight, is not paid within the period specified in a notice of deficiency, as required by the Act of May 12, 1970.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases:
Termination

An oil and gas lease terminated for failure to pay a nominal deficiency in the annual rental within the time specified in a notice of deficiency cannot be reinstated where tender or payment of the deficiency is not made within twenty days of the anniversary date, as required by the Act of May 12, 1970.

APPEARANCES: Raymond C. Gengler, Esq., for appellant.

OPINION BY MRS. THOMPSON

William C. Morgan appeals from a decision dated January 23, 1973, of the Wyoming State Office, Bureau of Land Management, holding his oil and gas lease, Wyoming 15888, to have terminated by operation of law for nonpayment of rent.

Appellant made a payment of his annual rent prior to the December 1, 1972, anniversary date of his oil and gas lease. However, his payment was deficient in the amount of fifty cents. Subsequently, on December 6, 1972, he received a notice of deficiency from the Wyoming State Office informing him that he had fifteen days in which to pay the deficiency and that if payment was not made within that time his lease would automatically terminate. Appellant neither paid the deficiency nor notified the State Office of the reason for the nonpayment. By letter of January 23, 1973, the State Office informed him that his lease had terminated. Subsequently, on January 31, 1973, appellant tendered payment of the deficiency.

Appellant now contends that his lease should be reinstated. The basis for his contention is that his check records, at the time he received the notice of deficiency, indicated that his original payment was not deficient. However, when his check returned from the bank, he ascertained that it was, in fact, deficient by the fifty cents.

The Act of July 29, 1954, amending Section 31(b) of the Mineral Leasing Act of 1920, 68 Stat. 585, 30 U.S.C. § 188(b) (1970), provides that advance rental payment for an oil and gas lease upon which there is no producing well must be received on or prior to the anniversary date of the lease or the lease automatically terminates by operation of law. This provision and an amendatory Act of October 15, 1962, 76 Stat. 943, had harsh consequences in certain instances where payment was late or nominally deficient. See, e.g., Mike Abraham, A-27763 (December 22, 1958); Duncan Miller, A-30067 (March 12, 1964) (a \$ 1.00 deficiency); Joan Witmer, A-30986 (March 3, 1969); Union Texas Petroleum, A-30970 (March 5, 1969).

Accordingly, Congress, in an attempt to alleviate the harshness of the 1954 Act, by section 1, Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(b) (1970), again amended the Mineral Leasing Act to provide, inter alia, that if payment is made on or before the anniversary date of the lease and is only nominally deficient, the lease will not terminate automatically unless the lessee fails to pay the deficiency before the anniversary date of the lease or within the period prescribed in a notice of deficiency thereafter sent to the lessee by the Secretary, whichever is later. A nominal deficiency is one which is not more than ten dollars or five percent of the total payment due, whichever is greater. 43 CFR 3108.2-1(b). Under that same regulation, a lessee is allowed 15 days after receipt of a notice of deficiency or until the due date, whichever is later, to submit the deficiency. Only if such payment is not made within the prescribed period is the lease terminated. Id.

Here, appellant failed to avail himself of the opportunity to avoid termination of his lease by payment of the deficiency within the period prescribed in the notice of deficiency. Consequently, his lease terminated by operation of law. There is no authority granted to us by the statute to excuse compliance with its terms where the failure to pay the deficiency is occasioned by a misapprehension of fact by the lessee.

By section 2 of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), under certain circumstances, a lease which has been terminated by operation of law may be reinstated. In order to have a lease reinstated, however, proper tender of the full amount of the rent must be made within twenty days of the anniversary date of the lease. Id.

Here, appellant did not tender the full amount within twenty days of the anniversary date as required by statute. 1/ 30 U.S.C. § 188(c). Even though the deficiency in the rental payment was very slight, our authority to give remedial relief here is circumscribed by the amendments to the Mineral Leasing Act discussed above. Cf. Champlin Oil and Refining Co., 66 I.D. 26 (1959); Duncan Miller, supra. Since appellant does not come within the remedial portions of the Act, his lease cannot be reinstated. Cf. Robert P. Good, 6 IBLA 233 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Member

We concur:

Edward W. Stuebing
Member

Newton Frishberg
Chairman

1/ In fact, full payment was not tendered until January 31, 1973, almost two months after the anniversary date.

